No. 06-1170

Supreme Court, U.S.
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In The

Supreme Court of the United States

BILL J. CORY,

Petitioner,

v.

AZTEC STEEL BUILDINGS *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT TO THE QUESTIONS PRESENTED

I. Whether Petitioner has presented compelling reasons to grant the Petition, where the Tenth Circuit's Opinion affirming that District Court's rigorous analysis is in accord with the plain congressional intent of the "nationwide service of process" provision in RICO and, therefore, does not implicate an important federal question that needs to be ruled upon by this Court.

II. Whether Petitioner had presented compelling reasons to grant the Petition, where the issue of long arm jurisdiction under the Kansas long arm statute fails to implicate an important federal question that needs to be ruled upon by this Court.

III. Whether Petitioner has presented compelling reasons to grant the Petition, where the accrual of the RICO statute of limitations is based on uniform analysis applied by the federal circuits and does not implicate a federal question that needs to be ruled upon by this Court.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

There are no other parties to the proceeding other than those listed herein.

Respondent Steel Factory Corporation does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

Respondent Universal Steel Corporation does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

Respondent Aztec Steel Buildings does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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BRIEF IN OPPOSITION

SUMMARY OF REASONS TO DENY PETITION

Petitioner has presented no compelling reason why certiorari should be granted in the present action. Petitioner requests certiorari regarding two rulings from the district court which were subsequently affirmed in the Tenth Circuit Court of Appeals. The first ruling dismissed four Respondents from the action for lack of personal jurisdiction. Although Petitioner argued that personal jurisdiction existed under the "nationwide service of process" provision of the Racketeering Influence Corrupt Organization act or, alternatively, the Kansas Long Arm Statute, both lower courts determined the factual findings did not warrant personal jurisdiction over Respondents Steel Factory Corporation, Arnold Davis, Shawn Davis or Gary Bonacci.

The District court then granted summary judgment on statute of limitations grounds as to the remaining Respondents, Universal Steel of Pennsylvania and Aztec Steel Buildings. Under the facts of the case, Petitioner failed to pursue any action against any of the Respondents regarding the alleged defective quonset huts at issue for more than four years after the discovery of the injury. This failure to pursue any remedies within a four year period barred Petitioner's claims under RICO, products liability, and the Kansas Consumer Protection Act.[1]

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[1] The applicable RICO Statute of Limitations is four years, Kansas Consumer Protection Act is three years and products liability is two years. *See Agency Holding Corp. v. Malley-Duff & Assoc., Inc.*, 483 U.S. 143, 156 (1987); *Alexander v. Certified Master Builders Corp.*, 268 Kan. 812, 1 P. 3d 899 (2000) (holding that actions under the KCPA seeking damages and civil penalties are subject to the three year statute of

(Continued on following page)

The essential holdings of the Tenth Circuit Court of Appeals appealed from are as follows:

1. The nationwide service of process provision in RICO is unavailable to Petitioner since he failed to meet the "ends of justice" as required for the application of RICO's nationwide service of process provision contained in U.S.C.A. § 1965(b).

2. The statute of limitations with respect to any of Petitioner's claims under RICO or state law had expired under the injury discovery rule or the injury occurrence rules articulated by the United States Supreme Court and the Circuit Courts of Appeal.

3. No personal jurisdiction exists under the Kansas long arm statute with respect to the individual respondents and Respondent Steel Factory Corporation since none of those respondents had sufficient contact with the forum state to confer jurisdiction.

While issues one (1) and two (2) implicate federal law, issue three (3) is wholly within the province of the Tenth Circuit Court of Appeals since it applied its expertise in the interpretation of Kansas law. *Unum Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999); *Stenberg v. Carhart*, 530 U.S. 914 (2000). Consequently, the remaining question for this Court is whether the issues presented in (1) and (2) warrant review in the United States Supreme Court. Respondents posit that review is simply not warranted. Not only were these issues correctly decided, there is no

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limitations found in K.S.A. 60-512(2); K.S.A. 60-3301 *et seq.* (Kansas Products Liability Act)

evidence of an important federal question that needs to be taken up by this Court.

Throughout this litigation and within the Petition for Writ of Certiorari, Petitioner has continually made unfounded allegations of fraud and misrepresentation which were dismissed by the district court and the Tenth Circuit Court of Appeals upon careful examination of the evidence. Instead, this case is a simple garden variety products liability claim which Petitioner has attempted to transform into a RICO claim. Petitioner purchased a product, installed that product and used that product for years without incident. At some point, Petitioner became dissatisfied with the product and contacted the manufacturer. However, when Petitioner filed the lawsuit in 2003, he was out of time to pursue any remedies that may have been available to him.

Moreover, he attempted to assert personal jurisdiction over three individuals and a corporation with no evidence of sufficient contacts with the forum state to support the exercise of personal jurisdiction. In a last-ditch effort to salvage personal jurisdiction, Petitioner argues that the outdated interpretation of RICO's "nationwide service or process" should be applied. While there is technically a split in the circuits regarding this application, courts applying this provision since the landmark case of *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65 (2nd Cir. 1998) have realized the intent of Congress that 18 U.S.C.A. § 1965(b) and not the catch-all provision of § 1965(d) is the nationwide service of process provision. This Court recognized as much in denying certiorari on the identical personal jurisdiction issue in *Centricut, LLC v. ESAB Group, Inc.*, 523 U.S. 1048 (1998) (denying Petition for Certiorari due to Fourth Circuit misconstruction of RICO's "nationwide service of process" provision).

Since there is no important issue or conflict to be resolved with respect to the RICO Nationwide Service of Process Provision, the accrual of the RICO statute of limitations or the Kansas Long Arm Statute, Petitioner's request for certiorari should be denied in its entirety.

STATEMENT OF THE CASE

On April 8, 2004, Petitioner filed an Amended Complaint in the United States District Court for the District of Kansas alleging that the Respondents violated the Organized Crime Control Act of 1970 et al. and the Kansas Consumer Protection Act. Petitioner also alleged violations of K.S.A. 60 § 3303 (Kansas Products Liability Act). Respondents Steel Factory, Gary Bonacci, Arnold Davis and Shawn Davis filed a motion to dismiss for lack of personal jurisdiction as none are Kansas residents nor did any of these Respondents have contact with the State of Kansas regarding the purchase of the five quonset huts in question. This Motion was granted as to these Respondents.

Subsequently, a Motion for Summary Judgment was filed by the remaining Respondents, Universal Steel Buildings and Aztec Steel Buildings arguing that the statute of limitations had run on all claims against these two entities and that based on the uncontroverted facts, Petitioner was not entitled to the relief he requested.

This lawsuit arises out of the collapse of several quonset huts purchased by Petitioner. The underlying facts of this case establish that Petitioner, a farmer in Republic County, Kansas, contacted Midwest Steel Span of Overland Park, Kansas regarding the possible purchase of

several metal quonset buildings for hay storage. Upon contacting Midwest Steel Span (an entity unrelated to any of the corporate Respondents), Petitioner alleges he was informed that there were five "military" style quonset huts available for purchase as a government contract had fallen through. After negotiating with Midwest Steel Span, Petitioner entered into a contract with Midwest Steel Span for the purchase of the quonset huts. According to the terms of the contract, Petitioner agreed to purchase the five quonset huts from Midwest Steel Span of Overland Park, Kansas on March 30, 1993. Pursuant to his contract with Midwest Steel Span, Petitioner received the component parts for the metal quonset buildings and hired a contractor to oversee the process of pouring and setting of the foundations.

The five (5) initial buildings purchased were completed in 1993 and performed without issue until June of 1995 when the first building allegedly sustained damage caused by wind. At no time in 1995 did Petitioner contact any of the defendants to complain about the buildings or to institute a warranty claim. The only action taken by Petitioner after this initial failure, was to place an order with Midwest Steel Span for six replacement arches in 1996. The second metal quonset building allegedly sustained damage in June of 1999. It was at this time Petitioner admits "he knew he had a problem" with the buildings. However, once again, Petitioner made no effort to contact the manufacturer or make a claim under the "warranties" he alleges were in place. Petitioner did contact Respondent Universal Steel Buildings of Pennsylvania directly in 1996 to order nine (9) replacement arches for the second building. No attempt was ever made to contact

Respondent Steel Factory or complain about the quality of the buildings. The final building collapsed in 2001.

Once Steel Factory was advised of the problems with the quonset buildings in December of 2001, Respondent Steel Factory sent a licensed engineer to conduct an investigation. The licensed engineer retained by Respondent Steel Factory determined that the foundations had not been constructed in accordance with the foundation guidelines issued by the manufacturer.[2] The Kansas Attorney General concluded that there was no violation of the Kansas Consumer Protection Act. Subsequently, in August of 2003, this lawsuit was filed.

The corporate defendants in this matter are all separate Pennsylvania corporations and were not parties to this contract. Instead, the contract was exclusively between Mr. Cory and Midwest Steel Span, an independent dealer that often sold products manufactured by one of the corporate defendants, Steel Factory Corporation. The other defendants in this matter do not manufacture the products in question. Universal Steel Buildings of Pennsylvania is another independent dealer of products manufactured by defendant Steel Factory. In the same vein, Defendant Aztec Steel Buildings, Inc. is an independent shipping company that often delivers parts manufactured by Steel Factory Corporation to those purchasing products from various independent dealers.

Generally, when Steel Factory Corporation receives a purchase order from an independent dealer, it supplies the

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[2] The buildings were shipped as component parts. Petitioner was then responsible for the construction of the buildings in accordance with the specifications.

material ordered pursuant to a dealership agreement. Upon shipment of the material by Steel Factory Corporation, title to the merchandise shifts from Steel Factory to the dealer until such time as delivery and final payment is received by the consumer. In this particular case, Midwest Steel Span entered into an agreement with another independent dealer, Universal Steel Buildings of Kansas City, Missouri, a Missouri corporation. Universal Steel Buildings of Kansas City, Missouri then submitted a separate purchase order to Respondent Steel Factory Corporation of Pennsylvania. This contract listed Midwest Steel Span as the "buyer" and Universal Steel Buildings of Kansas City, Missouri as the seller.[3]

All of the corporate Respondents in the present matter are Pennsylvania corporations and not registered to do business in the State of Kansas. None of these entities has any corporate relationship to Midwest Steel Span of Overland Park, Kansas. In fact, as admitted by Petitioner, none of these entities took part in the negotiations for the purchase of the original five quonset huts in question.

The individual Respondents in this matter are Arnold Davis, Shawn Davis, and Gary Bonacci. Arnold Davis is a resident of Pennsylvania. He is the President of Aztec Steel Buildings, Inc., Steel Factory Corporation and Universal Steel Buildings, Inc. of Pennsylvania. Mr. Arnold Davis does not maintain a residence, personal bank accounts, own any land or pursue any other personal

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[3] As noted by the Tenth Circuit Court of Appeals, Universal Steel of Kansas City Missouri is an independent dealer to whom Midwest Steel Span sold Mr. Cory's purchase order and is wholly unrelated to Respondent Universal Steel of Pennsylvania.

business ventures in Kansas. Respondent Shawn Davis is a resident of Florida and is the Vice President of Aztec Steel Buildings, Inc., Steel Factory Corporation and Universal Steel Buildings, Inc. of Pennsylvania. Mr. Shawn Davis does not maintain a residence, personal bank accounts, own any land or pursue any other personal business ventures in Kansas. Finally, Respondent Gary Bonacci is the Plant Manager of Steel Factory Corporation. Mr. Bonacci does not maintain a residence in Kansas, personal bank accounts, own any land or pursue any other business ventures in Kansas.

REASONS FOR DENYING THE PETITION

Supreme Court Rule 10 outlines the requirements for review by the United States Supreme Court. As noted in Rule 10:

> Review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling or fully measuring the Court's discretion, indicate the character and reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with the decision by a state court of last resort; or has so far departed from the accepted usual course of judicial proceedings or sanctioned such departure by a lower

> court, as to call for an exercise of this Court's supervisory power:
>
> . . . .

Since the decisions in question were rendered by the United States District Court for the District of Kansas and the Tenth Circuit Court of Appeals, subsections (b) and (c) of Rule 10 are inapposite. Consequently, Petitioner must establish that the Tenth Circuit has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter. In the present action, the fact that there may be a minor conflict between several Circuits on one of Petitioner's issues, does not warrant a granting of Petitioner's Petition for Writ of Certiorari. *See, e.g., Centricut, LLC v. ESAB Group, Inc.*, 523 U.S. 1048 (1998) (denying Petition for Writ of Certiorari to determine construction of RICO's nationwide service or process provision.)

I. RICO NATIONWIDE SERVICE OF PROCESS PROVISION

A. This Court Has Already Determined The Question Presented Regarding The "Nationwide Service Of Process Provision" Does Not Merit Review

In *Centricut, LLC v. ESAB Group, Inc., supra*, the United States Supreme Court denied a certiorari petition requesting review based on a "conflict between the circuits" with respect to the proper interpretation of RICO's nationwide service of process provision. Specifically, the Petitioner, *Centricut, LLC,* requested certiorari based on the Fourth Circuit opinion applying 1965(d) as RICO's nationwide service of process provision.

Although the Tenth Circuit in the present action correctly applied 1965(b) as the "nationwide service of process" provision, it is clear from this Court's denial of a previous request to determine this issue.

B. The Tenth Circuit Court Of Appeals Correctly Analyzed Current Case Law And Applied To The Undisputed Facts In Determining RICO's Nationwide Service Of Process Provision Was Inapplicable Since The "Ends Of Justice" Requirement Had Not Been Met

In the present action, the district court and the Tenth Circuit Court of Appeals carefully and correctly determined the issues presented in the products liability case. First, the district court was faced with a motion to dismiss filed by four of the defendants, a Pennsylvania based company and three individuals employed by or serving as officers with some or all of the defendants. The Tenth Circuit correctly determined that Defendant Steel Factory, a Pennsylvania based manufacturer providing products to independent dealers was not subject to personal jurisdiction under RICO or the Kansas Long Arm Statute. Although Petitioner asserted the RICO "nationwide service of process" provision, the Tenth Circuit determined that the "ends of justice" requirement was not met in this case since the Court had only Mr. Cory's assertion that he had sustained damage in Kansas to consider when determining the propriety of Kansas as a forum. The Tenth Circuit Court of Appeals also agreed with the District Court that state long arm jurisdiction was not present.

RICO's "nationwide service of process" provision was originally considered by the Ninth Circuit in *Butchers Union Local No. 498 v. SDC Inv., Inc.,* 788 F.2d 535, 538

(9th Cir. 1986). Although the Ninth Circuit correctly concluded that 1965(b) contained RICO's "nationwide service of process" provision, it did not address the existence of 1965(d). The Seventh Circuit similarly concluded that 1965(b) authorized nationwide service of process but failed to address subsection (d). Ten years later, the Eleventh Circuit addressed subsection (d) but erroneously concluded that it authorized "nationwide service of process." *See Republic of Panama v. BCCI Holdings (Luxemborg) S.A.*, 119 F.3d 935, 942 (11th Cir. 1997). Subsequently, the Fourth Circuit agreed but failed to address the opposite conclusion of the Seventh and Ninth Circuits. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 627 (4th Cir. 1997); *See* 18 U.S.C.A. § 1965 in Petitioner's Petition for Writ of Certiorari at page C-1. The statute states, in pertinent part:

> 1965 Venue and Process
>
> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parities to be summoned, and process for that purpose may be served in any judicial district of the United States . . .
>
> (c) In any civil or criminal action or proceeding instituted by the United States under this

> chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district. . . .
>
> (d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent or transacts his affairs.

The circuits have issued conflicting opinions regarding whether (b) or (d) of § 1965 contains the "nationwide service of process provision." The split in the circuits noted by Petitioner essentially arises because the Fourth and Eleventh Circuits considered the application of RICO's nationwide service of process provision in 1997 and did "not pause long over the . . . question." *See Tenth Circuit Court of Appeal Opinion* at p. B-6 of Petitioners Brief (citing *Republic of Panama v. BCCI Holdings,* 119 F.3d 935, 942 (11th Cir. 1997). Moreover, the decisions of the Second and Seventh Circuits do not provide much analysis regarding their conclusion that the 1965(b) provides for "nationwide service of process."

In *PT United Can Co. v. Crown Cork & Seal Co.,* 138 F.3d 65 (2nd Cir. 1998), the Second Circuit reviewed the decisions of all these circuits and performed a full analysis of the text of 18 U.S.C.A. § 1965. In that analysis, the court conducted a comprehensive sequential reading of the statute concluding that 1965(a) sets venue in "any district in which [a defendant] resides, is found, has an agent, or transacts his affairs." *Id.* This section thereby suggests that "an action can only be brought in a district court where personal jurisdiction based on minimum contacts is established as to one defendant," *Tenth Circuit Court of*

Appeals Opinion at p. B-6 of Petitioner's Brief (citing *PT United Can,* 138 F.3d at 71). The Second Circuit then looked at 1965(b) which "authorizes service of summons on other parties residing beyond the venued district if necessary to further the 'ends of justice.'" *Id.* The *PT United Can* court concluded that the "ends of justice" requirement in this provision expressed Congress' preference that "defendants not be unnecessarily haled into unexpected forums." *Id.* The final provision, 1965(d) referencing "'[a]ll other process' must mean process" different that a summons or government subpoena both of which are dealt with in previous subsections. *Id.* (citing *PT United Can,* 138 F.2d at 72). Based on this analysis, it was clear to the *PT United Can* court that Congress intended § 1965(d) to address situations not covered by the other provisions. Since § 1965 unequivocally addresses personal jurisdiction, the ends of justice requirement contained therein cannot be ignored.

In the present action, the Tenth Circuit carefully reviewed the statute and the analysis in *PT United Can, supra,* in applying § 1965(b) to determine whether the District Court in Kansas had personal jurisdiction over the three individual respondents and Respondent Steel Factory Corporation. Additionally, the court correctly determined that Petitioner had failed to satisfy the "ends of justice requirement" necessary to invoke jurisdiction over these four non-resident Respondents since the only evidence presented was that Petitioner sustained damage in Kansas. The evidence of damage sustained in the forum state, without more, is insufficient to invoke RICO's nationwide service of process provision.

II. KANSAS LONG ARM STATUTE

The Tenth Circuit Court of Appeals next considered whether the Kansas Long Arm Statute conferred personal

jurisdiction over the three individual Respondents and Respondent Steel Factory. Since the construction of the Kansas Long Arm Statute is uniquely within the expertise of the Tenth Circuit, this Court should refuse Certiorari on the issue. *See Stenberg v. Carhart*, 530 U.S. 914 (2000) (noting the Supreme Court "rarely reviews construction of a state law agreed upon by two lower federal courts.") As the Supreme Court has recognized time and again, it "rarely reviews the construction of a state law agreed upon by two lower federal courts." *Stenberg v. Carhart*, 120 S. Ct. 2597 (U.S. 2000); *see also Unum Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999); *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994); *Pierson v. Ray*, 386 U.S. 547 (1967); and *United States v. Durham Lumbar Co.*, 363 U.S. 522 (1960).

In analyzing the Kansas Long Arm Statute, the Tenth Circuit and the United States District Court for the District of Kansas recognized that none of the three individual respondents or Respondent Steel Factory Corporation had sufficient minimum contacts to satisfy the requirements of the due process clause as applied to the specific circumstances and facts of this case. In doing so, the District Court and the Tenth Circuit made very specific factual findings which would not likely be disturbed by this Court. *Easley v. Cromartie*, 532 U.S. 234 (2001) (stating U.S. Supreme Court rarely, if ever, overturns factual findings of a district court affirmed by a court of appeals). Simply put, Petitioner presented no evidence of contacts with the forum state on the part of the three individual respondents or Respondent Steel Factory.

As noted by both lower courts, a Petitioner has the burden of establishing that personal jurisdiction may be properly exercised over particular defendants. *Phillips*

USA, Inc. v. Allflex USA, Inc., 857 F. Supp. 789 (D. Kan. 1994). Prior to trial, when a motion to dismiss is decided on the basis of affidavits and other written materials, a Petitioner need only make a prima facie showing that the court may properly exercise personal jurisdiction over the defendants. *Carrothers Constr. Co. v. Quality Service & Supply, Inc.*, 586 F. Supp. 134, 135-36 (D. Kan. 1984). In ascertaining the facts necessary to establish jurisdiction, allegations in the complaint are accepted as true to the extent they are uncontroverted by submitted affidavits. *Phillips*, 857 F. Supp. at 791 (citing *Pytlik v. Professional Resources, Ltd.*, 887 F.2d 1371, 1376 (10th Cir. 1989); *Behagen v. Amateur Basketball Ass'n*, 744 F.2d 731, 733 (10th Cir. 1984), *cert. denied*, 471 U.S. 1010, 105 S. Ct. 1879, 85 L. Ed. 2d 171 (1985).

Initially, it is important to note that Respondent has attached an unrelated unpublished disposition out of the Arkansas Court of Appeals. *See Bill J. Cory v. Tom Keeling*, No. CA02-440 (Ark. 2003) (unpublished disposition). In that case, the Arkansas Court of Appeals determined that minimum contacts existed sufficient to warrant the application of the Kansas Long Arm Statute. However, that case involved a totally unrelated defendant and a totally unrelated transaction for the purchase of hay. Moreover, the Arkansas Court of Appeals has less experience with the Kansas Long Arm Statute than the United States District Court for the District of Kansas and the Tenth Circuit Court of Appeals.

Other than that opinion, Petitioner relies on the same unsupported assertions and misapprehensions he has asserted throughout this litigation.

A. Respondent Steel Factory Corporation

The two lower courts carefully examined the evidence to sift through these unsupported assertions and determine the facts underlying these claims. In so doing, the court determined that Respondent Steel Factory, the manufacturer of the component parts for the buildings, never did business in Kansas. Instead:

> "the record before the court shows that Midwest Steel (the Kansas independent dealer from whom Mr. Cory purchased the buildings) is an independently owned and operated business. There is no evidence that Steel Factory has any ownership interest in Midwest Steel. Moreover, there has been no showing that Steel Factory has any control over the business affairs of Midwest. In fact, plaintiff has filed to show that Steel Factory even conducted business with Midwest Steel. Rather, the materials before the court show that Midwest Steel sold its purchase order with plaintiff to Universal Steel Buildings of Kansas City, Missouri, and then placed the order with Steel Factory.

B. Inaccuracies in Petitioner's Brief Regarding the Corporate Entities Involved

Petitioner asks this Court to disregard the factual findings of the lower courts which is simply not warranted nor is it the general practice of the United States Supreme Court to disrupt the factual findings of two lower courts. *Easley v. Cromartie*, 532 U.S. 234 (2001) (stating U.S. Supreme Court rarely, if ever, overturns factual findings of a district court affirmed by a court of appeals). Petitioner inaccurately states the corporate relationships between the entities involved throughout his Petition. As noted in

the opinions of the Courts below, the evidence established that Respondent Steel Factory Corporation was not related to Midwest Steel nor was Midwest Steel acting as an agent for Respondent Steel Factory. *See Tenth Circuit Opinion in Petitioner's Brief* at B-11. Additionally, Petitioner inaccurately refers to Aztec Steel Buildings and Universal Steel of Pennsylvania as "sister corporations." Again, the careful review of the evidence plainly establishes that these companies are wholly separate from one another and are not "sister corporations."

Additionally, Petitioner refers to discovery produced by Respondent Aztec Steel Buildings, Inc. with regard to component parts shipped to Kansas as if this discovery evinced Respondent Steel Factory's contact with the State of Kansas. *See Petitioner's Brief* at p. 19. As the courts below determined, Petitioner's attempts to mix and mingle "the corporations" was not supported by the evidence.

Consequently, Petitioner's request for review of the "minimum contacts" analysis performed by the lower courts should be denied.

C. Individual Defendants

The overwhelming evidence presented in the two lower courts plainly establishes that Kansas lacked personal jurisdiction over the three individual respondents and Respondent Steel Factory Corporation in the present action. Again, Petitioner incorrectly requests that this Court overrule the factual findings of two lower courts. As repeatedly noted by this Court, factual findings affirmed in two lower courts will not be disturbed by the United States Supreme Court. *Easley v. Cromartie*, 532 U.S. 234 (2001) (stating U.S. Supreme Court rarely, if ever,

overturns factual findings of a district court affirmed by a court of appeals). Consequently, Petitioner's attempts to completely disregard those factual determinations and reargue his version of events in the United States Supreme Court.

The two courts below found that personal jurisdiction did not exist as to the three individual respondents as none of these individuals maintained residents, bank accounts, property or had any other contact with Kansas. Although Arnold Davis and Shawn Davis were corporate officers in Respondent Aztec Steel Buildings and Universal Steel Buildings of Pennsylvania, personal jurisdiction cannot attach to corporate officers merely based on their status as such. Petitioner simply has no evidence to support jurisdiction in Kansas for these individual defendants.

III. RICO STATUTE OF LIMITATIONS

The Tenth Circuit also affirmed the District Court's grant of summary judgment to the remaining Respondents in this action, Respondent Aztec Steel Buildings, Inc. and Respondent Universal Steel Buildings of Pennsylvania. In doing so, the Tenth Circuit Court of Appeals noted that regardless of whether it applied the "injury accrual" or the "injury occurrence" rule, Mr. Cory was out of time under the applicable limitations period when he filed his action in August of 2003. As noted by the Tenth Circuit Court of Appeals, "the crux of Cory's RICO claims is that defendants sold "defective buildings to take his money." *Tenth Circuit Court of Appeals Opinion* in Petitioner's Brief at p. B-13. Moreover, "Cory testified at disposition [sic] that he 'realized [he] had a problem when two buildings had blown

down.'" The Tenth Circuit Court of Appeals correctly determined that even under Respondent's separate accrual of injury" theory, Respondent's injuries occurred at the time of purchase in 1993, 1995 and 1996. Since suit was not filed until 2003, all of the RICO claims are barred by the four year statute of limitations. At any rate, Mr. Cory admitted he knew of the problems with the purchases in 1999.

While one of the buildings blew down in 2001, the Tenth Circuit Court of Appeals corrected the District Court's determination that the RICO action regarding that building was timely, holding that "Cory's injury was complete when he purchased the allegedly defective buildings and parts. The defendants' purported racketeering activities caused that injury and the wind revealed it by collapsing the buildings."

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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